Paper No. 13

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte L. LEONARD HACKER

Appeal No. 2004-1292
Application No. 09/525,244

ON BRIEF

Before FRANKFORT, NASE, and RUGGIERO, Administrative Patent Judges.

NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 to 46, which are all of the claims pending in this application.

We REVERSE.

BACKGROUND

The appellant's invention is drawn to an electronic medical record system and service for centrally storing patients medical records electronically on a database for patient-controlled remote access by both patients and medical providers (specification, p. 1). A copy of the dependent claims under appeal is set forth in the appendix to the appellant's brief. Claims 1 and 19, the only independent claims on appeal, read as follows:

1. A patient-controlled electronic medical record system comprising:
a medical information server connected to a network;
a medical information database connected to the medical information server;
a plurality of patient medical records stored on the medical information database;
a plurality of medical provider computers connected to the network and having software to communicate with the medical information server;
means for patients to allow medical provider computers to access patient-selected portions of the patient's medical record for viewing and adding to the patient's medical record; and
means for patients to access all portions of their medical record using browser software on a computer connected to the network.

19. A method for patient control of an electronic medical record comprising:
connecting a medical information server to a network;
connecting a medical information database to the medical information server;
storing a plurality of patient medical records on the medical information database;
connecting a plurality of medical provider computers to the network wherein said medical provider computers include software to communicate with the medical information server;
providing patients with means to allow medical provider computers to access patient-selected portions of the patient's medical record for viewing and adding to the patient's medical record; and

providing patients means for accessing all portions of their medical record using browser software on a computer connected to the network.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Edelson et al. (Edelson)	5,737,539	Apr. 7, 1998
Lavin et al. (Lavin)	5,772,585	June 30, 1998
Ross, Jr. et al. (Ross)	5,823,948	Oct. 20, 1998
Evans	5,924,074	July 13, 1999
Surwit et al. (Surwit)	6,024,699	Feb. 15, 2000
Moshfeghi et al. (Moshfeghi)	6,076,166	June 13, 2000
Chou et al. (Chou)	6,330,499	Dec. 11, 2001

Claims 1, 2, 5 to 9, 14, 19, 20, 23 to 27, 32 and 37 to 44 stand rejected under 35 U.S.C. § 103 as being unpatentable over Evans in view of Moshfeghi.

Claims 3, 4, 15, 21, 22 and 33 stand rejected under 35 U.S.C. § 103 as being unpatentable over Evans in view of Moshfeghi and Surwit.

Claims 10 and 28 stand rejected under 35 U.S.C. § 103 as being unpatentable over Evans in view of Moshfeghi and Edelson.

Claims 11 to 13 and 29 to 31 stand rejected under 35 U.S.C. § 103 as being unpatentable over Evans in view of Moshfeghi and Ross.

Claims 16 and 34 stand rejected under 35 U.S.C. § 103 as being unpatentable over Evans in view of Moshfeghi and Lavin.

Claims 17, 35, 45 and 46 stand rejected under 35 U.S.C. § 103 as being unpatentable over Evans in view of Moshfeghi and Official Notice.

Claims 18 and 36 stand rejected under 35 U.S.C. § 103 as being unpatentable over Evans in view of Moshfeghi and Chou.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejections, we make reference to the answer (Paper No. 9, mailed August 12, 2003) for the examiner's complete reasoning in support of the rejections, and to the brief (Paper No. 8, filed May 23, 2003) and reply brief (Paper No. 10, filed October 14, 2003) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. Upon evaluation of all the evidence before us, it is our conclusion that the evidence adduced by the

examiner is insufficient to establish a prima facie case of obviousness with respect to the claims under appeal. Accordingly, we will not sustain the examiner's rejection of claims 1 to 46 under 35 U.S.C. § 103. Our reasoning for this determination follows.

In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a prima facie case of obviousness. See In re Rijckaert, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). A prima facie case of obviousness is established by presenting evidence that would have led one of ordinary skill in the art to combine the relevant teachings of the references to arrive at the claimed invention. See In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988) and In re Lintner, 458 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972).

With this as background, we analyze the prior art applied by the examiner in the rejection of the independent claims on appeal.

Evans' invention relates to electronic healthcare systems, and more particularly, to a system for storage and retrieval of electronic medical records in a computer environment, such as a local or wide area network including portable computers. The electronic medical record (EMR) system of Evans' invention automates and simplifies existing methods of patient chart creation, maintenance and retrieval. In contrast to

other systems, Evans' invention creates and maintains all patient data electronically and thus can eliminate or supplement creating and maintaining of physical data records. The EMR system furnishes healthcare providers with an intuitive, easy-to-use, icon-based interface that enables them to capture and analyze patient data quickly and efficiently. Using Evans' invention, healthcare providers enter patient data immediately at the point of care. Thus, the EMR system captures each piece of data at its source at the time of entry to provide a complete audit trail for all patient data. In this manner, the EMR system transforms a patient chart from a static record of a few clinical interactions into a dynamic, real-time comprehensive record linked to an enterprise-wide clinical database. In addition, the EMR system includes the capability to manage a wide variety of patient data formats, including patient data from external sources, such as laboratories and pharmacies. The EMR system can also incorporate a patient's legacy data, such as a paper chart, into the patient record as well as legacy data from mainframe computers.

Evans' invention likewise provides instant access to a patient's electronic medical record by authorized healthcare providers from any geographical location. Thus, the EMR system enables authorized healthcare providers to access and update patient files using wireless pen-based personal computers. To enable complete replacement of physical records, Evans' invention permits healthcare providers, such as physicians or

nurse practitioners, to electronically annotate patient data. Thus, a healthcare provider can acknowledge reviewing patient data, provide instructions, such as prescriptions for medication to administer to a patient, and approve recommendations for treatment by other providers, all by electronically annotating a patient's record. In addition, authorized healthcare providers can access a record while other providers use the same record allowing for real-time collaboration. The availability of electronic data permits instant, sophisticated analysis of patient data. Moreover, the EMR system enables enhanced analysis of patient data by providing access to reference databases for diagnosis, procedures and medication. Evans teaches (column 15, lines 21-32) that:

> the present invention ensures patient confidentiality through the use of a tiered password system. The EMR system provides several levels of security for access to patient data. For example, a system administrator may have global password access to any patient data for system maintenance and debug purposes, whereas physicians may have access only to patient records within their specialty and nurses and staff may have access to only those patient records within their immediate care. In addition, a patient may request restricted access to their data by only certain personnel. Thus, in contrast to physical records, the EMR system provides superior protection of patient data.

Moshfeghi's invention relates to information systems including at least one web server which is accessible via a network by user or client equipment operating web browser software. In its particular aspects, Moshfeghi's invention relates to a web system or site which provides web or hypertext pages and/or other data objects

that are personalized to the user. While Moshfeghi's invention addresses personalization in an internal network, known as an intranet, maintained by a hospital or similar institution, Moshfeghi states (column 1, lines 10-15) that many of its principles are also applicable to intranets in other settings, to internets, and to the World Wide Web accessible via the essentially global network known as the Internet. It is an object of Moshfeghi's invention to provide a system wherein a web server is accessible by a web browser via a network, wherein the presumed needs, declared and/or logged topics of interests, access rights to information and environments of users are taken into account in presenting web pages to a user's web browser.

With respect to access privileges, Moshfeghi teaches (column 5, lines 27-57) that:

> it is clear that in a hospital environment different users will have different privileges for access to information based upon their specialty and their relationship to the patient (i.e. patient's attending physician, consulting physician, attending nurse, etc.). For example, not only do different occupations/specialties need different "views" of the CPR which are tailored to their needs but different patient relationships may influence the level of detail presented in sensitive areas. For example, all physicians who treat a patient may see that the patient is undergoing psychiatric treatment, but the details of this sensitive area may be privileged only to the attending psychiatrist and the patient. Also, access to records for certain "VIP" patients (politicians, actors, etc.) may be further restricted than for normal patients, due to the increased potential for adverse publicity and blackmail. Patients should be able to see their own CPRs, in full detail. The same is also true for legal guardians of underage or legally incapable patients.

> All users should have a default log-in which has minimal privileges, but is based on location. Therefore, any health care provider inside a hospital may be able to see a summary CPR for any in-patient without a special log-in (other than identifying themselves as health care providers, for example via smart card ID). However, this capability would not be available from outside the firewall guarding the integrity of the intranet.
>
> Security within the intranet system is provided by well known protocols which use digital signatures, authentication, and document alteration prevention techniques.

Moshfeghi further teaches (column 6, lines 49-62) that:

> FIG. 2 illustrates how personalization information is used to generate custom web pages. The first step for the user is to enter his/her name and password with a web browser at block 32 which is applied to the rule generation block 34. The latter generates rules for retrieving the appropriate information from the CPR and processing it for a personalized presentation. However, if it is determined in block 34 that the user is unauthorized, then in block 36 server scripts generate an error message web page which is sent to the client at block 38. Information about the computer is automatically obtained at block 34 from the IP address. The user also has to provide at block 32 the ID of the patient which he/she is interested in. This is because user privileges and access control rules are patient dependent.

After the scope and content of the prior art are determined, the differences between the prior art and the claims at issue are to be ascertained. Graham v. John Deere Co., 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966).

Based on our analysis and review of Evans and claim 1, it is our opinion that Evans does not disclose (1) a patient-controlled electronic medical record system; (2) means for patients to allow medical provider computers to access patient-selected

portions of the patient's medical record for viewing and adding to the patient's medical record; and (3) means for patients to access all portions of their medical record using browser software on a computer connected to the network.

Based on our analysis and review of Evans and claim 19, it is our opinion that Evans does not disclose (1) a method for patient control of an electronic medical record; (2) providing patients with means to allow medical provider computers to access patient-selected portions of the patient's medical record for viewing and adding to the patient's medical record; and (3) providing patients means for accessing all portions of their medical record using browser software on a computer connected to the network.

In the rejection of independent claims 1 and 19, the examiner determined (answer, p. 5) that it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include the limiting of access privileges to view patient records as taught Moshfeghi within the electronic medical records system as taught by Evans. The motivation for this modification was stated to be the keeping of records of "VIP" patients (politicians, actors, etc.) restricted due to the increasing potential for adverse publicity and blackmail as taught by Moshfeghi.

However, such a modification of Evans does not arrive at the claimed invention for the reasons set forth by the appellant in the briefs. With regard, to claim 1, the combination of Evans and Moshfeghi does not teach or suggest a **patient-controlled** electronic medical record system having means for patients to allow medical provider computers to access patient-selected portions of the patient's medical record for viewing and adding to the patient's medical record.[1] With regard, to claim 19, the combination of Evans and Moshfeghi does not teach or suggest a method for **patient control** of an electronic medical record having the step of providing patients with means to allow medical provider computers to access patient-selected portions of the patient's medical record for viewing and adding to the patient's medical record.

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[1] The examiner's assertion (answer, p. 18) that this means clause does not invoke treatment under the sixth paragraph of 35 U.S.C. § 112 is without merit. Where a claim uses the word means to describe a limitation, we must presume that the inventor used the term advisedly to invoke the statutory mandates for means-plus-function clauses. See Sage Prods., Inc. v. Devon Indus., Inc., 126 F.3d 1420, 1427, 44 USPQ2d 1103, 1109 (Fed. Cir. 1997) (citation omitted); see also Ex parte Klumb, 159 USPQ 694, 695 (Bd. App. 1967)(the manner in which a means-plus-function element is expressed, either by a function followed by the term means or by the term means for followed by a function, is unimportant so long as the modifier of that term specifies a function to be performed). This presumption can be rebutted where the claim, in addition to the functional language, recites structure sufficient to perform the claimed function in its entirety. See Sage Prods. v. Devon Indus., 126 F.2d at 1427-28, 44 USPQ2d at 1109; see also Al-Site Corp. v. VSI Int'l, Inc., 174 F.3d 1308, 1319, 50 USPQ2d 1161, 1167 (Fed. Cir. 1999).

For the reasons set forth above, the decision of the examiner to reject claims 1 and 19, and claims 2 to 18 and 20 to 46 dependent thereon, under 35 U.S.C. § 103 is reversed.[2]

CONCLUSION

To summarize, the decision of the examiner to reject claims 1 to 46 under 35 U.S.C. § 103 is reversed.

REVERSED

CHARLES E. FRANKFORT
Administrative Patent Judge

JEFFREY V. NASE
Administrative Patent Judge

JOSEPH F. RUGGIERO
Administrative Patent Judge

) BOARD OF PATENT APPEALS AND INTERFERENCES

[2] We have also reviewed the references to Surwit, Edelson, Ross, Lavin and Chou and the Official Notice taken by the examiner but find nothing therein which makes up for the deficiencies of Evans and Moshfeghi discussed above regarding claims 1 and 19.

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